



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: The Hackney Group--Reconsideration

File: B-261241.2

Date: January 25, 1996

DECISION

The Hackney Group requests reconsideration of our decision, The Hackney Group, B-261241, Sept. 5, 1995, 95-2 CPD ¶ 100, in which we denied its protest of the rejection of its bid for failure to acknowledge amendment No. 0005 to invitation for bids (IFB) No. MDA946-95-BA007, issued by the Department of Defense, for roof replacement at Federal Building No. 2 (the "Navy Annex") in Arlington, Virginia.

We deny the request.

The solicitation sought firm, fixed-price bids for the removal and replacement of the Navy Annex's existing roof. As part of the work, the solicitation required removal of existing asbestos. The solicitation package contained three asbestos drawings, drawn to scale, which identified the specific portions of the roof from which asbestos would have to be removed. The solicitation package also included architectural drawings and an overall site plan, drawn to a smaller scale, which contained numeric dimensions for the perimeter of the building.

The solicitation required that asbestos removal work be performed by a certified asbestos removal company; thus, prime contractors which were not so qualified were required to obtain subcontractor bids for the asbestos removal work. After one potential bidder advised the agency that various asbestos subcontractors were providing it with differing quotations based on differing square footage amounts of asbestos removal work to be performed, and that the asbestos removal area in the asbestos drawings was inconsistent with the same area in either the architectural drawings or the site plan, the agency determined that the asbestos drawings were inaccurate. Specifically, the contracting officer concluded that application of the scale provided on the asbestos drawings resulted in an understatement of the asbestos removal work by between 10,000 and 20,000 square feet. The contracting officer further determined that the scale and dimensions contained in the architectural drawings and the site plan drawing accurately reflected the actual dimensions. Accordingly, on March 31, the agency issued amendment No. 0005 which stated that the asbestos drawings were published at a smaller scale than indicated, and that the actual dimensions for the roof were as shown on the site plan and the architectural drawings.

At bid opening, Hackney was determined to be the low bidder at \$1,690,000; the second-low bid was \$1,837,600. Upon review, the agency rejected Hackney's low bid as nonresponsive for failure to acknowledge amendment No. 0005, and made award to the second-low bidder, whereupon Hackney filed its initial protest with our Office.

In our decision denying the protest, we concluded that the amendment did more than clarify agency requirements—it clearly established the actual dimensions of the asbestos removal area, thereby obligating the winning bidder to remove all asbestos discovered at the contract price. We recognized that without the amendment, the winning contractor ultimately could have argued that it was entitled to a price increase because the asbestos drawings inaccurately indicated the likely amount of asbestos to be removed. We further stated that an agency is not required to enter into a contract which presents the potential for litigation stemming from a solicitation ambiguity; rather, it has an affirmative obligation to avoid potential litigation by resolving solicitation ambiguities prior to bid opening. Air Quality Experts, Inc., B-256444, June 15, 1994, 94-1 CPD ¶ 374.

In its reconsideration request, Hackney argues that in assessing the materiality of amendment No. 0005, we failed to address the price impact as is required under Federal Acquisition Regulation (FAR) § 14.405(d)(2). Hackney contends that amendment No. 0005 had a negligible effect on the bid price, and therefore its failure to acknowledge the amendment should have been waived by the agency as a minor informality.

Hackney's reconsideration request misconstrues the cited FAR provision as requiring a finding of more than a negligible price impact in order to determine that an amendment is material. In fact, the provision also provides that an amendment is material where it would have more than a negligible impact on quantity, quality, or delivery of the item solicited. See FAR § 14.405(d)(2). Here, the amendment dealt with the quantity of asbestos to be removed, and because the amendment resolved an ambiguity concerning that quantity that had presented the potential of litigation, the amendment was material.

Hackney has not shown that our prior decision contains any errors of fact or law or information not previously considered that warrants reversal or modification of our decision. See 4 C.F.R. § 21.12(a) (1995). Accordingly, the request for reconsideration is denied.

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